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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,737	07/19/2001	Tracy Glaser	KLR 7965.001	2437

7590 04/29/2003

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EXAMINER

PIERCE, WILLIAM M

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 04/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/909,737	GLASER, TRACY
Examiner	Art Unit	
William M Pierce	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 April 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 23-27,34-41,50-60,73-78 and 85-104 is/are pending in the application.

4a) Of the above claim(s) 85-104 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 23-27,34-41,50-60 and 73-78 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) 85-104 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

WILLIAM M. PIERCE
PRIMARY EXAMINER

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . 6) Other: _____

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DETAILED ACTION

Newly submitted claims 85-104 are directed to an invention of the combination of a computer game and a "proxy" that is independent or distinct from the invention originally claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 85-104 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

Claims 23-27, 34-41, 50-60 and 73-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Sloane for the reasons set forth below in response to applicant's remarks.

Response to Arguments

Applicant's arguments filed 4/15/03 have been fully considered but they are not persuasive.

While applicant feels Sloane does not show the invention as set forth in claim 23, the examiner disagrees. As to paragraphs (a) and (b), Sloane discloses a game where personal information "such details as age" (col. 7, ln. 18) are obtained by "each user of the system...to input personal information" (ln. 23). This modifies his game scenario as required by paragraph (c) in order to "tailor the content" (ln. 33) to the individual users. As such the claim remains clearly anticipated.

Claims 24-27 remain rejected as being dependent from claim 23.

As to claim 34, Sloane creates a psychological profile based upon "psychological characteristics" or by inputting personal information. The source of the information used is disclosed as being immaterial to his invention. It can come from user input or from public health authorities, educators, medical professionals, and lawmakers/enforcement officials" (co. 11, ln. 460.). The source of the information being a "care giver" is considered to be inherent. Note that in interpreting a reference, one must consider such as a matter of common knowledge and common sense of the person of ordinary skill in the art. (See *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969)). As in the instant case, Sloane is concerned with obtaining information about the users of the game that can be input in order to tailor the experience. It is inherent that the source of that information can originate from an unlimited number of sources as well as the user themselves. Note that in evaluating a reference, it is proper to take into account not only the specific teaching of the reference(s) but also the inferences which one skilled in the art

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would reasonably be expected to draw therefrom. *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). Additionally, one must observe that an artisan must be presumed to know something about the art apart from what the references disclose (see *In re Jacoby*, 309 F.2d, 513, 516, 135 USPQ 317, 319 (CCPA 1962)).

Claims 35-41 depend from claim 34 and fail to distinguish over the applied art for the same reasons.

As to claim 50, Sloane shows the use of "graphical representation" such as "Hispanic female" (col. 7, ln. 27).

Based upon this information, the scenario is modified for that particular user.

Claims 51-60 depend from claim 50 and are not considered patentable for the same reasons as claim 50.

As to claim 73, it calls for "at least one of...a video company". Sloane shows "audio-visual subject matter presented to the user" (4th to last ln. of abstract). Based upon the information obtained from the user, a video is provided as called for in the claim.

Claims 74-78 depend from claim 73 and are not considered patentable for the same reasons as claim 73.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address bill.pierce@USPTO.gov or at telephone number (703) 308-3551.

Any inquiry not concerning the merits of the case such as **missing papers, copies, status or information** should be directed to Tech Center 3700 Customer Service Center at (703) 306-5648 where the fax number is (703) 308-7957 and the email is CustomerService3700@uspto.gov.

For **official fax** communications to be officially entered in the application the fax number is (703) 305-3579.

For **informal fax** communications the fax number is (703) 308-7769.

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Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.



WILLIAM M. PIERCE
PRIMARY EXAMINER